

Albert N. Kennedy, OSB No. 821429 (Lead Attorney)
Direct Dial: 503.802.2013
Facsimile: 503.972.3713
E-Mail: albert.kennedy@tonkon.com

Timothy J. Conway, OSB No. 851752
Direct Dial: (503) 802-2027
Facsimile: (503) 972-3727
E-Mail: tim.conway@tonkon.com

Michael W. Fletcher, OSB No. 010448
Direct Dial: (503) 802-2169
Facsimile: (503) 972-3869
E-Mail: michael.fletcher@tonkon.com

Ava L. Schoen, OSB No. 044072
Direct Dial: (503) 802-2143
Facsimile: (503) 972-3843
E-Mail: ava.schoen@tonkon.com

TONKON TORP LLP
888 SW Fifth Avenue, Suite 1600
Portland, OR 97204-2099

Attorneys for Debtors

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re

Wall to Wall Tile & Stone, LLC (TIN 9732),
Wall to Wall Tile & Stone-Oregon LLC
(TIN 1863), and Wall to Wall Tile & Stone-
Idaho LLC (TIN 9431).

Debtors.

Case No. 19-32600-dwh11
LEAD CASE

(Jointly Administered with Case Nos. 19-32599-dwh11 and 19-32603-dwh11)

**MOTION FOR ENTRY OF AN ORDER
AUTHORIZING DEBTORS TO PAY
CERTAIN PREPETITION LIEN
CLAIMS IN THE ORDINARY COURSE
OF BUSINESS**

EXPEDITED HEARING REQUESTED

Wall to Wall Tile & Stone, LLC, Wall to Wall Tile & Stone-Oregon LLC, and Wall to Wall Tile & Stone-Idaho LLC, debtors and debtors-in-possession ("Debtors"), move this

1 Court for entry of an Order Authorizing Debtors To Pay Certain Prepetition Lien Claims in the
2 Ordinary Course of Business and in support thereof state as follows:

3 1. On July 16, 2019 (the "Petition Date"), Debtors filed voluntary petitions
4 for relief under Chapter 11 of Title 11 of the United States Code.

5 2. On July 18, 2019, the Court entered an Order Directing Joint Administration
6 Pursuant to FRBP 1015(b) of each of the Debtors' cases [Case No. 19-32600-dwh11, ECF No. 24;
7 Case No. 19-32599-dwh11, ECF No. 29; and Case No. 19-32603-dwh11, ECF No. 23].

8 3. Debtors have continued in possession of their property and are continuing
9 to operate and manage their businesses as debtors-in-possession pursuant to Sections 1107(a) and
10 1108 of Title 11 of the United States Code.

11 4. No request has been made for the appointment of a trustee or examiner.
12 An official committee of unsecured creditors was appointed in Debtors' cases on July 26, 2019.

13 5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157
14 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a
15 core proceeding pursuant to 28 U.S.C. § 157(b)(2).

16 6. The statutory basis for the relief requested herein are Sections
17 105, 363(b), 1107(a) and 1108 of Title 11 of the United States Code, and Rule 6003 of the
18 Federal Rules of Bankruptcy Procedure.

19 7. Debtors were founded in 2008 in Vancouver, Washington by Tyler
20 Kruckenberg with four employees. Mr. Kruckenberg had 20 years of experience in the stone
21 countertop supply and fabrication industry. He envisioned a large scale advanced manufacturer
22 that could deliver fully integrated solutions offering better selection, price, and service to the
23 market.

24 8. Debtors have grown to approximately 250 employees and annual sales
25 exceeding \$30 million. Debtors' sales are concentrated in granite and quartz countertops.
26 Marble and exotic stones, including soapstone, slate, and limestone are also offered, as are

1 custom stone vanity tops, backsplashes, floor tiles, and other interior surfaces. To complement
2 its array of stone countertop products, Debtors offer several value-added services, including
3 design, project layout, home visitation for digital measurement, customized cutting, and hand
4 finished home installation.

5 9. As part of their operations, Debtors are hired by general contractors to
6 design, supply, and/or install countertops and other stone surfaces in connection with significant
7 renovations or new construction real property projects. In doing this work, Debtors rely to a
8 significant degree on and/or routinely contract with a number of third-party material suppliers
9 (the "Lien Claimants") from whom Debtors source the stone, which is used to improve the real
10 property. The Lien Claimants may be entitled under applicable non-bankruptcy law to assert
11 liens against the improvement and the property being improved (collectively, "Liens") if Debtors
12 fail to pay for the materials provided to them by the Lien Claimants.

13 10. Moreover, if the Lien Claimants are not paid by Debtors and those Lien
14 Claimants do not, in turn, release their liens or lien rights on the improvement or property being
15 improved, the general contractors with whom Debtors contracted are entitled to withhold
16 payments to Debtors for Debtors' services.

17 11. As of the Petition Date, Debtors estimate that they owe approximately
18 \$270,000 for materials provided by Lien Claimants pre-petition. Debtors' inability to pay those
19 Lien Claimants due to the filing of Debtors' bankruptcy cases has resulted in or will result in
20 Debtors' inability to collect approximately \$1,000,000 in payments from general contractors.

21 12. Unless and until the Lien Claimants release their liens or lien rights, the
22 general contractors will not pay Debtors for work performed by Debtors.

23 13. To ensure continued receipt of revenue from general contractors, which is
24 critical to the operation of Debtors' businesses, Debtors seek entry of an order, substantially in
25 the form attached hereto as **Exhibit 1**, authorizing, but not directing, Debtors to pay undisputed
26 pre-petition amounts owing to Lien Claimants to the extent such payments will result in the

1 receipt of revenue by Debtors from general contractors, which total revenue exceeds the amount
2 of the payments to the Lien Claimants.

3 14. To avoid undue delay and facilitate the continued operation of Debtors'
4 businesses, the completion of ongoing projects, and the receipt of revenue from general
5 contractors, Debtors seek immediate authority to pay and discharge, on a case-by-case basis, the
6 pre-petition claims of Lien Claimants that have given or could give rise to a Lien without further
7 application to or approval by the Court.

8 15. The ability of Debtors to pay the Lien Claimants in the ordinary course of
9 business and receive revenue from general contractors is critical to Debtors' reorganization
10 efforts and consistent with Sections 363(c) and 1108 of the Bankruptcy Code, which together
11 authorize the continued operation of a business in the ordinary course by Chapter 11 Debtors.

12 16. Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, Debtors
13 In-Possession are fiduciaries "holding the bankruptcy estate and operating the business for the
14 benefit of its creditors and equity owners." *In Re CoServ, LLC*, 273 B.R. 487, 497 (Bankr. N.D.
15 Texas 2002). Consistent with Debtors' fiduciary duties, courts have also authorized payment of
16 prepetition obligations where a sound business purpose exists for doing so. *See, e.g., In re*
17 *Chateaugay Corp.*, 153 B.R. 632 (Bankr. S.D.N.Y. 1993).

18 17. Debtors believe that cause exists, under these circumstances, to authorize
19 Debtors to pay the aforementioned pre-petition Lien Claimants in the ordinary course of business
20 as described above.

21 18. A copy of the proposed Order Authorizing Debtors to Pay Certain
22 Prepetition Lien Claims in the Ordinary Course of Business is attached hereto as **Exhibit 1**.

23 * * *

24 * * *

25 * * *

26 * * *

1 WHEREFORE, Debtors request that this Court enter an order granting the
2 requested relief as set forth above.

3 DATED this 2nd day of October, 2019.

4 TONKON TORP LLP
5

6 By /s/ Ava L. Schoen _____
7 Albert N. Kennedy, OSB NO. 821429
8 Timothy J. Conway, OSB No. 851752
9 Michael W. Fletcher, OSB No. 010448
10 Ava L. Schoen, OSB No. 044072
11 Attorneys for Debtors
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT 1

PROPOSED FORM OF ORDER

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re

Wall to Wall Tile & Stone, LLC (TIN 9732),
Wall to Wall Tile & Stone-Oregon LLC
(TIN 1863), and Wall to Wall Tile & Stone-
Idaho LLC (TIN 9431),

Debtors.

Case No. 19-32600-dwh11
LEAD CASE

(Jointly Administered with Case
Nos. 19-32599-dwh11 and
19-32603-dwh11)

**ORDER AUTHORIZING DEBTORS
TO PAY CERTAIN PREPETITION
LIEN CLAIMS IN THE ORDINARY
COURSE OF BUSINESS**

THIS MATTER having come before the Court upon Debtors' Motion for Entry of an Order Authorizing Debtors to Pay Certain Prepetition Lien Claims in the Ordinary Course of Business ("Motion"), and the matter having come before the Court, and the Court finding good cause therefor and that the relief requested is appropriate; now, therefore,

IT IS HEREBY ORDERED that

1. The Motion is granted;

Page 1 of 2 - ORDER AUTHORIZING DEBTORS TO PAY CERTAIN PREPETITION LIEN CLAIMS IN THE ORDINARY COURSE OF BUSINESS

Tonkon Torp LLP
888 SW Fifth Ave., Suite 1600
Portland, OR 97204
503.221.1440

2. Debtors are authorized, but not required, to pay and discharge, on a case-by-case basis and in the ordinary course of business, certain pre-petition Lien Claimants (as defined in the Motion) as they deem appropriate without further order of the Court;

3. Nothing in the Motion or this Order, nor Debtors' payment of Lien Claimants pursuant to this Order, shall be deemed or construed as (a) an admission as to the validity of any claim against Debtors, (b) a waiver of Debtors' rights to dispute any claim on any ground; (c) a promise to pay any claim; or (d) the assumption of any contract;

4. The requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this Order;

5. Pursuant to Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry; and

6. This Court shall retain jurisdiction over any matters arising from or related to the implementation or interpretation of this Order.

#

I certify that I have complied with the requirements of LBR 9021-1(a).

Presented by:

TONKON TORP LLP

By _____

Albert N. Kennedy, OSB No. 821429
Timothy J. Conway, OSB No. 851752
Michael W. Fletcher, OSB No. 010448
Ava L. Schoen, OSB No. 044072
888 S.W. Fifth Avenue, Suite 1600
Portland, OR 97204-2099
Telephone: 503-221-1440
Facsimile: 503-274-8779
E-mail: al.kennedy@tonkon.com
tim.conway@tonkon.com
michael.fletcher@tonkon.com
ava.schoen@tonkon.com

Attorneys for Debtors

cc: List of Interested Parties

Page 2 of 2 - ORDER AUTHORIZING DEBTORS TO PAY CERTAIN PREPETITION LIEN CLAIMS IN THE ORDINARY COURSE OF BUSINESS

Tonkon Torp LLP
888 SW Fifth Ave., Suite 1600
Portland, OR 97204
503.221.1440

Case 19-32600-dwh11 Doc 175 Filed 10/02/19

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **MOTION FOR ENTRY OF AN ORDER AUTHORIZING DEBTORS TO PAY CERTAIN PREPETITION LIEN CLAIMS IN THE ORDINARY COURSE OF BUSINESS** on the parties indicated as "ECF" on the attached List of Interested Parties by electronic means through the Court's Case Management/Electronic Case File system on the date set forth below.

In addition, I served the foregoing on the parties indicated as "Non-ECF" on the attached List of Interested Parties by mailing copies thereof in sealed, first-class postage prepaid envelopes, addressed to the parties' last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below.

DATED this 2nd day of October, 2019.

TONKON TORP LLP

By s/ Ava L. Schoen

Albert N. Kennedy, OSB NO. 821429
Timothy J. Conway, OSB No. 851752
Michael W. Fletcher, OSB No. 010448
Ava L. Schoen, OSB No. 044072
Attorneys for Debtors

040202/00003/10402926v1

CONSOLIDATED LIST OF INTERESTED PARTIES

***In re Wall to Wall Tile & Stone, LLC, Wall to Wall Tile & Stone-Oregon LLC,
and Wall to Wall Tile & Stone-Idaho LLC***

**U.S. Bankruptcy Court Case No. 19-32600-dwh11 LEAD CASE
(Jointly Administered with Case Nos. 19-32599-dwh11 and 19-32603-dwh11)**

ECF PARTICIPANTS

- TIMOTHY J CONWAY tim.conway@tonkon.com, candace.duncan@tonkon.com; spencer.fisher@tonkon.com
- MICHAEL W FLETCHER michael.fletcher@tonkon.com, leslie.hurd@tonkon.com; spencer.fisher@tonkon.com
- ALBERT N KENNEDY al.kennedy@tonkon.com, leslie.hurd@tonkon.com; spencer.fisher@tonkon.com
- WENDY E. LYON wlyon@foxrothschild.com, jshickich@foxrothschild.com
- AVA L SCHOEN ava.schoen@tonkon.com, leslie.hurd@tonkon.com
- BRAD T SUMMERS summerst@lanepowell.com, docketing-pdx@lanepowell.com; holleym@lanepowell.com
- TIMOTHY A SOLOMON tsolomon@llg-llc.com, justin-leonard-leonard-law-group-llc-5265@ecf.pacerpro.com
- US TRUSTEE, PORTLAND USTPRegion18.PL. ECF@usdoj.gov

NON-ECF PARTICIPANTS

SECURED CREDITORS

Baffco Enterprises, LLC
POB 1683
Brush Prairie, WA 98606

Enterprise FM Trust
20400 SW Teton Ave.
Tualatin, OR 97062

PROPERTY TAX ENTITIES

Clark County Treasurer
POB 5000
Vancouver, WA 98666-5000

King County Assessments Dept.
500 4th Ave. S. #708
Seattle, WA 98104

Ada County Assessor
190 E. Front St. #107
Boise, ID 83702

Deschutes County Tax Collector
POB 7559
Bend, OR 97701

040202/00003/10192884v2